

# The Texas Lawbook

Free Speech, Due Process and Trial by Jury

## Truelove: The Last Name Attached to Some of Marshall's Biggest Verdicts

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MARSHALL — Jennifer Truelove has a line she routinely delivers at the federal courthouse here. It's a line designed to break the ice with a jury pool — that roomful of local strangers she's about to probe.

"We kind of have the courthouse surrounded," she tells them. She kind of has a point.

The Sam B. Hall Jr. Federal Building and U.S. Courthouse sits on Houston Street in Marshall near the center of this quaint East Texas burg. Perched primly to its east is the Baxter Building, a stylish three-story structure where Truelove offices as a principal with the McKool Smith law firm. To its west, staring at the courthouse from a stark white wall, is a sign that reads "Truelove Law Firm." Behind it, her husband Kurt runs his solo law practice.

While Truelove's opener is meant in jest, their shared last name has been attached to some of the biggest jury verdicts and settlements to come out of this town of 24,000 residents that in the last two decades has become famous, even infamous, for its patent litigation docket.

Since early last year, Jennifer has been part of McKool Smith teams that have secured a string of patent infringement wins amounting to more than \$1 billion for their clients:

- A \$303 million verdict for Netlist in a computer memory case against Samsung ranked among the largest verdicts in Texas for 2023;
- Another \$67.5 million verdict against Samsung for G+ Communications in



**Kurt and Jennifer Truelove**

January 2024 (U.S. District Judge Rodney Gilstrap ordered a new trial on damages, and, the jury in April awarded \$142 million);

- Another \$445 million verdict for Netlist in May 2024, this time against Micron Technology; and
- In September, yet another \$192 million patent infringement win against Samsung for California startup Mojo Mobility.

And none of that includes her part in the historic \$1.4 billion settlement on behalf of the state of Texas against Facebook parent Meta over privacy issues.

While Jennifer's outsized numbers command headlines, Kurt's legal career demands attention in its own right.

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This year, for instance, he served as local counsel in Harrison County with a Susman Godfrey team that scored a \$287 million verdict for Dutch telecommunications company Koninklijke in a breach-of-contract case against Samsung Electronics. By the time the state district judge attached past damages, prejudgment interest and cost, the final judgment topped \$341 million.

Kurt has no website for his law firm. But potential clients know where to find him. And his reach in East Texas goes beyond Marshall. He is the city attorney for Waskom, the only city between Marshall and Louisiana on Interstate 20. He also represents six emergency services districts. His private practice also includes probate, personal injury and work as local counsel in patent cases.

The role of local counsel is a crucial one, both Trueloves believe; and Jennifer and Kurt Truelove are about as local as you can get.

Kurt's family history in Marshall extends for generations. His mother's side of the family has been in Marshall since the 1800s, he said. Kurt was born and raised in Marshall and played tight end on the Mavericks' 1990 state high school championship football team.

Kurt left home to attend Baylor University and graduated with a degree in accounting.

He planned to pursue that line of work, but his father, who worked as an office manager for some friends who were lawyers, urged him to go to law school. So he headed to Lubbock and Texas Tech University School of Law to do just that.

Jennifer, on the other hand, grew up in the Dallas suburb of Plano. She obtained a degree in Russian from Texas A&M University with no real plan, she said. She was an assistant manager at a Barnes & Noble bookstore when she met a friend of a friend who was about to start law school. Hearing her talk about it intrigued Jennifer and the next day she bought "every study guide off the shelf" for the law school entrance exam.

Kurt and Jennifer met at Texas Tech and began dating. Kurt, who claims to

be a terrible writer, said Jennifer helped him through one of his writing-intensive classes.

The pair graduated in 1999, and without jobs lined up they went to Marshall and moved in with Kurt's parents. A local lawyer, whose son was Kurt's college roommate, offered the couple some work while they waited for their bar exam results.

"When we found out we passed the bar, of course her phone rang immediately," Kurt said of Jennifer.

She joined a firm then called Curry and Morin (name partner Brad Morin is now a state district court judge in Harrison County) before going to the DA's office. Kurt went to work for a Texarkana law firm known then as Patton, Tidwell and Sandefur. Robert Schroeder III, now a federal judge in the Eastern District of Texas, became a named partner at the firm shortly after Kurt arrived.

The couple married in 2000 — "right in the middle of hunting season, which I really can't believe I agreed to," Kurt said — and moved about 20 miles north to Jefferson, easing Kurt's commute to Texarkana to about an hour.

Jennifer later went to work for the Harrison County district attorney's office, where she cut her teeth on trying cases as a prosecutor.

During her seven years in the DA's office, she tried felony child-assault cases and represented the state Department of Family and Protective Services when children were taken into protective custody. The pressures of explaining patent infringement are minimal compared to describing, in an open courtroom, the sexual penetration of a child.

Though Jennifer loves every aspect of trying a case, jury selection is "by far" her favorite part of any trial. While some lawyers shy away from the voir dire process for fear of what a potential juror might say, Jennifer said she feels in her element conversing in open court with strangers. Put her in most other situations where public speaking is required, and she's far less comfortable.

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“I can be, socially, horribly awkward,” Jennifer said. “I don’t particularly enjoy walking into a big event and having to talk to folks and schmooze and that kind of stuff. But standing in the courtroom, I don’t have a problem with it at all.”

Jennifer left the DA’s office in 2010 to join McKool Smith as a Marshall-based associate.

The couple moved back to Kurt’s hometown in 2011, a few years after he had convinced the Patton law firm to let him open a Marshall office.

Jennifer is by now firmly established in the Marshall community. She even served a term on the Marshall City Council beginning in 2021. Still, she sometimes bounces ideas off Kurt while preparing to speak to an East Texas jury. Jennifer points to one trial she had in Utah that underscored for her the importance of understanding the role of local counsel.

“We went up there telling our old jokes and tricks, and they didn’t land very well,” she said. Her team lost the case.

The couple’s two daughters graduated from Marshall High School, home of the Mavericks, where their son is a senior and performs in the band. And in the selection of jurors, she’s not reluctant to use those connections to determine who among them she wants deciding her case.

For instance, notice how she began her voir dire in September when kicking off *Mojo Mobility v. Samsung Electronics*:

“First question, and probably the most important question,” she began. “Who on the panel, like myself, has someone participating in Friday Night Lights tonight?”

A woman raised her hand. As it turned out, Jennifer and the potential juror knew one another. They’d served together on the Marshall Symphony League and ran in the same community circles.

The woman vowed that, if selected, Jennifer would not get a leg up with her based on their relationship. And regardless of the verdict, “We will still root for those Mavericks,” she added.

Next, Jennifer addressed the type of case the jury would be hearing, a patent case, with a man in the jury panel who

said he knew nothing about patents. She went out on a limb and asked if he was a hunter. He was – he got a deer lease every year.

“So when you have a deer lease, you have to pay somebody to use that property. Right?” Jennifer said. “Because you don’t own it; somebody else owns it.”

The potential juror affirmed.

“A patent is considered property, somebody’s idea that they put down on paper and they went back and forth with the Patent Office about and ultimately was awarded a patent,” Jennifer said, drawing a comparison to the case. The potential juror said he understood.

“And if somebody is going to use your invention contained in that patent, they have to pay you for it,” Jennifer said. Was the potential juror OK with that, she asked.

“I’m fine with that,” he said.

She’s both bonding and explaining the crux of the case in terms they can understand. It’s what good lawyers try to do. It’s what the best lawyers do best.

To date, the couple’s largest jury verdict remains one they worked on together. Jennifer and Kurt worked as part of a legal team with Boies Schiller & Flexner and others to represent a competitor-turned-whistle-blower named Joshua Harman in a 2012 False Claims Act suit against Trinity Industries.

Harman claimed Trinity Industries failed to inform the Federal Highway Administration that it shrank its ET-Plus highway guardrail system by an inch in 2005 in order to save \$50,000 annually in costs, a decision Harman alleged resulted in the deaths of car accident victims.

Harman first hired Harrison County personal injury lawyer Josh Maness, who has been friends with the Trueloves for nearly two decades. Maness filed the whistleblower case and then immediately recruited Kurt, he said. They eventually brought in more out-of-state lawyers.

The first trial against Trinity resulted in a mistrial. For the second trial, Kurt and Maness brought on Jennifer and her law partner Samuel F. Baxter, a former state district judge and DA in Harrison

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County who is now a principal in McKool Smith's Marshall and Dallas offices.

Jennifer and Kurt helped prepare many of the key witnesses, including the whistleblower, Maness said. And her input led to a key courtroom moment in the 2014 jury trial, even though she was not the attorney cross-examining the witnesses.

Trinity had called to the stand engineers at Texas A&M University – Jennifer's alma mater – who designed and patented one of the devices. On cross-examination, Baxter sought to show the engineers profited from royalties.

In the McKool Smith office the night before, Jennifer told Baxter to ask the engineers to recite A&M's "Aggie Code of Honor," which says: "An Aggie does not lie, cheat or steal or tolerate those who do."

"It put them in a box," Maness said. "Here they are, proud Aggies. Everybody loves the Aggies in East Texas. Did they look to personally profit?"

Maness recalled looking at the jurors; some shook their heads. He called it a moment he'll never forget.

"This was clearly not a key technical point about a device or anything, but it was a very important point because it went to credibility. And that's probably more important in a jury trial – witness credibility and lawyer credibility – than any of the technical stuff," Maness said. "That's what separates her from a large majority of the proverbial pack that calls themselves trial lawyers."

The jury returned a \$175 million verdict against Trinity. Trial judge Rodney Gilstrap later tripled the damages and added a \$138 million penalty for a whopping \$663 million judgment. Gilstrap also ordered Trinity to pay \$19 million in attorney fees. It was the largest verdict in what was then the 151-year history of the False Claims Act.

The legal team celebrated with a champagne toast in Jennifer's office the day of the verdict, Maness said.

The celebration proved short-lived. In 2017, the historic verdict was overturned by the U.S. Court of Appeals for the Fifth

Circuit, which rendered a judgment in favor of Trinity.

Jennifer and Kurt have never been on opposite sides of a case (and if they were, Maness said he'd bet on Jennifer). Kurt has declined cases because Jennifer was already hired to represent the other side. Last year, Kurt and Maness were driving back to Marshall from Austin when he got a call from an attorney looking to hire him as local counsel in a trademark case.

"Hey, I'm sitting next to another local lawyer who probably can help you. I just can't because Jennifer's on the other side," Kurt recalled saying.

Five minutes later, Maness was on the phone with that lawyer, he said. Maness joked with Jennifer that he would "see you in court." But the case settled.

Jennifer picked her first jury in a patent case in 2013; it was also her first trial in federal court. A team of firms including McKool Smith represented California-based chipset company OPTi Inc. in a lawsuit against Via Technologies. The jury awarded \$2.1 million.

From his office next door, Kurt could see a group of people leaving the courthouse on verdict day. He walked outside and saw Jennifer smiling with her legal team. She noticed Kurt and raised a thumbs up.

"I went back to my office having no idea what it was, but that it went well," Kurt said.

Since that first big win, Jennifer has played increasingly larger roles in jury trials and said she has felt her momentum building particularly within the past few years.

She serves as far more than local counsel, her peers say. Winston & Strawn partner Tom Melsheimer, who squared off against Jennifer and a McKool Smith team in the *Netlist v. Micron Technology* trial this spring, called her a "pro's pro."

"She's extremely capable," Melsheimer said. "If I were to hire her out there I would certainly want to engage her substantively as much as I could at the trial."

The key is good storytelling, especially in highly technical patent trials. She

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considers herself a good touchstone for determining whether a case is going to lose jurors to boredom or confusion because she doesn't have a background in technology.

McKool Smith lawyer Steven J. Pollinger, who has a bachelor's and master's degree in electrical engineering, describes her as a "trial pro." In *Mojo v. Samsung* trial, he said he found himself leaning on her instincts. During the lawyers' pre-trial prep, she clearly understood what they were trying to convey to jurors and offered tweaks to make the attorneys more relatable.

"To have someone that can go to a level of detail that's needed but also put on a case that you can sell [to] a jury is a very valuable skill set," Pollinger said.

She also has the ability to anticipate the other side's moves and often helps prepare witnesses by cross-examining them as though she were the other side. Pollinger said a witness in the *Mojo* case commented after testifying that Samsung's cross-examination was easier than Jennifer's during witness prep.

Another of her trial weapons, she admits, is fashion. Standing in Judge Gilstrap's courtroom in September, for instance, her commanding presence is hard to miss. In a sea of standard blue and gray suits, she is a pop of color — plum pantsuit, maroon blouse, pussy-bow collar, cascading honey-colored hair. Conferring with Pollinger, she stands, peering over thick, dark-rimmed glasses, a stack of yellow sticky notes and a pen protruding from a French manicure as though ready to pounce on any new idea.

Jennifer began noticing several years ago the jury panels coming to Marshall were filled with more and more women. Since 2018, she's had at least two all-women juries.

Part of the trial strategy, she says, is to stand out against the navy, gray and black of her male colleagues and appeal to the jury. Sometimes that means wearing a chic white blazer, "kind of like wearing the white hat," she said, to convey, "we're the good guys."

It doesn't hurt the strong-woman

image that when she talks her male colleagues seem to listen. "Jennifer says we should switch now," one of the young male lawyers who had been sitting at the counsel table said to a lawyer who had been in the gallery.

Jennifer believes a large part of her role today is to mentor. During the trial, she had a new McKool associate introduce a witness by deposition. She wanted the newly-minted lawyer to gain experience and to have a speaking role in the case that he worked countless hours on before trial.

Jennifer stands out because she is talented. But she also stands out because she's an anomaly.

It's an anomaly that needs fixing, particularly in the male-dominated spaces like patent infringement litigation, and legal teams must make an effort to reflect their juries, says Melsheimer, who says he's seen more women on juries than men in the past 35 years.

"That means having women in material roles and not just sitting there or being faces in the crowd," Melsheimer said.

But it can still be challenging to find women who are a mix of trial lawyers and patent attorneys, Melsheimer said.

"A lot of [patent lawyers] come from technical backgrounds, engineering and science, and we know that women are underrepresented in the undergraduate categories of engineering and sciences," Melsheimer said.

Jennifer said she's seeing more and more women focus their practices on patent law, although it's still unsurprising to go through a whole trial and only have one woman lawyer speak, or one per side. Marshall lawyer Melissa Smith, of Gillam & Smith, is often on the other side for *Samsung*, Jennifer noted.

"There's always been kind of a core group that's my age, but that group is growing within these younger ranks," Jennifer said.

Win or lose, the Trueloves celebrate, often together.

Once, after a loss, Jennifer and Kurt headed to a popular local restaurant

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where they encountered the opposing legal team celebrating their win. Among them was a young woman who Jennifer suspected had questioned her very first witness during the trial. The Trueloves sent the celebrants a bottle of champagne and, on their way out, Jennifer made a point of singling out the young woman for congratulations.

“We’re very collegial out here,” Jennifer said. “We acknowledge a job well done.”

When the Mojo jury returned a verdict of \$192 million against Samsung for patents belonging to Mojo founder Afshin

Partovi, they — both Kurt and Jennifer — celebrated with Partovi and Jennifer’s colleagues as they often do: grilling rib eyes topped with blue cheese crumbles at their lake house 25 miles south of Marshall. It’s a sort of ritual the couple enjoys with clients, with trial teams, with each other.

“We both appreciate what it means to do this job,” Jennifer said. “We both get each other; and we get how we are able to lift each other up ... We do pour a glass of wine and make a good steak.”

Jennifer corrects herself. “I pour the wine and *he* makes the steaks.”